IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 24-22142-CIV-GAYLES/SHAW-WILDER

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.
_____/

PLAINTIFF'S NOTICE OF AUTHORITIES IN SUPPORT OF HER REQUEST FOR ALL AGREEMENTS WITH CLASS MEMBERS UPON WHICH DEFENDANT INTENDS TO RELY ON IN SUPPORT OF ITS AFFIRMATIVE DEFENSES

Pursuant to Magistrate Judge Goodman's Discovery Procedures Order, Plaintiff submits this Notice of Authorities in support of her request that Wells Fargo Bank, N.A. ("Wells Fargo") produce all Class member agreements upon which it intends to rely on in support of its affirmative defenses. These authorities unsurprisingly demonstrate that where a defendant raises affirmative defenses grounded in contractual terms, it must disclose the very agreements forming the basis of those defenses. This issue is set for hearing on December 5, 2025, at 1:00 p.m.:

Brotz v. Simm Associates, Inc., 2018 WL 7269700, at *3 (M.D. Fla. May 8, 2018). The court compelled class member contract discovery – including identifying which class members' agreements authorized certain fees or contained arbitration clauses – because such contract-based information is directly relevant to class certification and cannot be withheld merely because the defendant asserts individualized contractual defenses.

Medina v. Enhanced Recovery Co., LLC, 2017 WL 5196093, at *1 (S.D. Fla. Nov. 9, 2017). The court compelled production of all documents the defendant claimed established express prior consent, holding that class member discovery tied to the defendant's affirmative defense is

discoverable because it is relevant both to class certification and to the factual basis of the defense itself.

Millstein v. Wells Fargo Bank, N.A., 2025 WL 2144596, at *16 (S.D. Fla. July 9, 2025). Judge Goodman declined to strike Wells Fargo's affirmative defenses – including Wells Fargo's Twenty-Fourth Affirmative Defense asserting the "Existence of Contract" – because their factual bases must be explored through discovery, underscoring that Wells Fargo placed the purported class member account agreements directly at issue.

Bazemore v. Jefferson Capital Sys., LLC, 827 F.3d 1325 (11th Cir. 2016). The Eleventh Circuit held the defendant failed to prove the existence of an arbitration agreement because it produced no evidence that the plaintiff ever assented to the terms through a valid clickwrap process or received a cardholder agreement containing an arbitration clause materially identical to the exemplar on which the defendant relied.

Fridman v. 1-800 Contacts, Inc., 554 F. Supp. 3d 1252 (S.D. Fla. 2021). The court held the defendant failed to show the plaintiff agreed to a binding browsewrap agreement because the webpages demonstrated that plaintiff could complete his purchase without ever seeing or interacting with the buried hyperlinks to the terms containing the arbitration agreement, class waiver, or choice-of-law provisions.

Collins v. Int'l Dairy Queen, Inc., 168 F.R.D. 668 (M.D. Ga. 1996), modified, 169 F.R.D. 690 (M.D. Ga. 1997). The court created a subclass of franchisees whose agreements contained arbitration clauses, recognizing that differing contractual terms among class members must be identified and managed through discovery.

Cooper v. Charter Communications, Inc., 2016 WL 128099 (D. Mass. Jan. 12, 2016). The court required the defendant to produce a Rule 30(b)(6) witness capable of testifying about individual arbitration agreements with its customers, finding that a defendant placing such agreements at issue must provide discovery into their terms.

Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 n.13 (1978). The Supreme Court recognized "discovery often…illuminate[s] issues upon which a district court must pass in deciding whether a suit should proceed as a class action under Rule 23, such as numerosity, common questions, and adequacy of representation."

Dated: November 25, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by CM/ECF on November 25, 2025, on all counsel or parties of record on the Service List below.

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